

VZCZCXYZ0024
PP RUEHWEB

DE RUEHPE #1152/01 0921736
ZNR UUUUU ZZH
P 021736Z APR 07
FM AMEMBASSY LIMA
TO RUEHC/SECSTATE WASHDC PRIORITY 4820
INFO RUEHAC/AMEMBASSY ASUNCION PRIORITY 1633
RUEHBO/AMEMBASSY BOGOTA PRIORITY 4511
RUEHBR/AMEMBASSY BRASILIA PRIORITY 7268
RUEHBU/AMEMBASSY BUENOS AIRES PRIORITY 2840
RUEHCV/AMEMBASSY CARACAS PRIORITY 0265
RUEHLP/AMEMBASSY LA PAZ APR 4141
RUEHMN/AMEMBASSY MONTEVIDEO PRIORITY 9142
RUEHQT/AMEMBASSY QUITO PRIORITY 1117
RUEHSG/AMEMBASSY SANTIAGO PRIORITY 1196
RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC PRIORITY
RUMIAAAA/USCINCSO MIAMI FL PRIORITY

UNCLAS LIMA 001152

SIPDIS

SENSITIVE
SIPDIS

E.O. 12958: N/A
TAGS: [PGOV](#) [PREL](#) [PHUM](#) [PINR](#) [KJUS](#) [PE](#)
SUBJECT: CONSTITUTIONAL REFORM: MORE SMOKE THEN FIRE

¶1. (SBU) Summary: During the 2006 Presidential election, candidates Alan Garcia and Ollanta Humala pledged to ditch the "illegal," Alberto Fujimori-inspired constitution of 1993 and return Peru to the labor-friendly, socialist model of 1979. As president, Garcia has shown no desire to tamper with Peru's strong economic growth and relative social stability by fulfilling this promise. Ignoring the nostalgic yearning of some in his own APRA party and strident calls from true believers on the far left, Garcia is forging a more pragmatic course of piecemeal constitutional reform. In the clear absence of political support for prolonged (and unproductive) constitutional wrangling, the administration is pursuing constitutional amendments that focus narrowly on judicial and electoral matters such as resurrecting the Senate, while leaving the "liberal" economic model untouched. In comparison with that of its neighbors in Bolivia and Ecuador, Peru's approach to constitutional reform seems a model of political pragmatism. End Summary.

Socialist Dream

¶2. (SBU) During the 2006 Presidential election, the top two candidates, Alan Garcia and Ollanta Humala, both called for Peru to ditch its Fujimori-era constitution and return to the constitution of 1979. Returning to the 1979 Constitution is a cause celebre for the Peruvian left, stemming as much from nostalgic and political as ideological reasons. In 1978, Victor Raul Haya de la Torre, renowned Peruvian socialist and founder of the APRA party, headed the Constitutional Assembly that paved the transition from military to civilian rule, and signed the finished document on his deathbed in 1979. Haya's Constitution dictated a "social market economic model" ("economica social del mercado") in which the state was afforded primacy in all economic matters, and was empowered to provide public services, intervene in economic sectors of national interest, and exercise control over foreign economic activities. The 1979 Constitution also guaranteed economic and social rights such as the right to work, the right to food, and the right to attain a standard of living allowing for personal well-being. Unsurprisingly, the result was little foreign investment and massive social spending. Some observers believe the 1979 Constitution justified the first Garcia Administration's attempt to nationalize the banking and insurance sectors, and therefore helped fuel hyperinflation and the near meltdown of the Peruvian economy by 1990.

The Fujimori Constitution

13. (SBU) In the early 1990s President Fujimori had little support in Congress and was making little headway with his reform agenda. With broad popular support, on April 5, 1992 Fujimori suspended congress and convened a new constitutional assembly. The resulting constitution strengthened the power of the presidency, reduced Congress to one body by eliminating the Senate, permitted the president to run for re-election, and restructured the Judicial branch. However, the main changes were economic. The 1993 Constitution enshrined a free-market ideology by removing the right of the state to intervene in the economy except for in health, education, security, and infrastructure, liberalizing the exchange rate regime, and guaranteeing equal treatment under law to foreign investment. It also eliminated guaranteed economic and social rights and rolled back labor protections. The constitution was approved by a narrow majority in a 1993 referendum. (Comment: Because the credibility of the referendum process was, in the view of many analysts, suspect, and thanks also to President Fujimori's broader assaults on democratic order, the 1993 document is sometimes referred to as the "Coup-induced Constitution" -- "Constitucion Golpista." End Comment.)

Constitutional Criticism

14. (SBU) With the restoration of democratic rule in 2000-1, criticism of the Fujimori Constitution grew louder. The main argument was that 1993 Constitution came into being in an era of de-facto (vice democratic) government and that the referendum was fraudulent. In response, then-President Paniagua convened a body of legal scholars under the rubric of the "Project for Constitutional Reform" to study ways to ensure the constitutional underpinning of Peru's fledgling democracy was both legal and legitimate. While the project made a series of formal recommendations, none of them were enacted. Calls for Constitutional reform have been a steady part of Peru's political discussion since that time. APRA members, for example, are motivated by a desire to bring back the document inspired by their founder. Other groups, including labor unions, object to the current constitution on ideological grounds and urge the return of state intervention in the economy, stronger labor laws, and a reduction of foreign economic and political influence. Criticisms of the 1993 Constitution appeared to find political traction during the 2006 Presidential elections.

15. (SBU) Despite his campaign rhetoric, Garcia has not pushed for constitutional reform since becoming president. APRA insiders say Garcia understands that political support for profound reform is non-existent. Moreover, he realizes that such reform would scare off foreign investment and undermine Peru's economic growth by creating uncertainty, possibly raising the specter of nationalizations, limiting labor flexibility, and mandating huge increases in social spending. Senior government officials also believe that pursuing a constitutional assembly now -- that is, engaging in protracted and ultimately unproductive negotiations to redraw the rules of the game -- would be a tremendous waste of time and energy. Summing up this view during a recent speech to the American Chamber of Commerce, Prime Minister Jorge Del Castillo commented that had Humala won the 2006 election, Peru would be going through the same kind of chaos and uncertainty as Ecuador was now. Instead, he continued, the government was focused on the important business of growing the economy and reducing poverty.

16. (SBU) The administration is moving forward with a more narrow constitutional reform agenda. APRA congressman and Constitutional Committee chairman Aurelio Pastor told us that his committee was pursuing minor changes of judicial and electoral matters, including bringing back the Senate. He insisted that radical reform -- a return to the 1979

Constitution or changing the economic model -- was not on the agenda, and enjoyed only minimal support in the Congress. UPP congressman Victor Mayorga, vice president of the Constitutional Committee, explained that Peru had changed since 1979 and, in the interest of stability, targeted amendments were more appropriate than was wholesale reform. In comments to the Ambassador, UPP congressional bloc leader Aldo Estrada said his party believed that necessary constitutional reforms could be done by Congress and that a new Constitutional Assembly was neither necessary nor viable.

Former presidential candidate Ollanta Humala and his Nationalist Party (PNP) remain the only group agitating for profound constitutional reform. In a recent multi-party meeting with President Garcia regarding state reform, Humala took a "Constituent Assembly or nothing" position. Separated from their former UPP alliance partners, however, the PNP represents fewer than 20 out of 120 congressional seats.

Comment: Not in the Cards

[17](#). (SBU) In comparison with that of its neighbors in Bolivia and Ecuador, Peru's approach to constitutional reform seems a model of political pragmatism. Although sweeping constitutional change remains a rallying cry for the country's disaffected and is likely to continue generating occasional noise in an ongoing discussion, politically at least, it is just not in the cards.

STRUBLE